IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3048 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO. LTD.

Versus

MANILAL DHANJIBHAI GAMIT

Appearance:

MS LILU K BHAYA for Petitioner

RULE SERVED for Respondent No. 1

MR BJ JADEJA for Respondent No. 4

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 02/05/2001

ORAL JUDGEMENT

Heard Ms. Lilu K. Bhaya learned advocate for the appellant and Mr. B.J.Jadeja learned advocate for respondent no.4. Respondent nos. 1,2 and 3 served. By

consent of parties, appeal is taken up for final hearing.

2. This is an appeal filed under Section 173 of the Motor Vehicle Act,1988 (for short "the Act") at the instance of original opponent no.2 - insurer of the offending vehicle so as to challenge the judgement and award dated 21.6.2000 rendered by M.A.C.Tribunal (Main), Surat in the proceedings of M.A.C.Petition No.653 of 1999 below Exh.6 under Section 140 of the Act.

3. It would be pertinent to note that the award under Section 140 of the Act being in the nature of interim award subject to adjustment against the award which may be passed in the main claim petition being M.A.C.Petition No. 653 of 1999 pending before the M.A.C.Tribunal (Main), Surat and as such, it would not be just and proper to interfere with the impugned judgement and award at this stage of the matter. That no useful purpose would be served by keeping the appeal pending. However, an undertaking of respondent no.1 - original claimant is necessary so as to direct the claimant to obtain the decision on merits in M.A.C.Petition No. 653 of 1999 pending before the M.A.C.Tribunal (Main, Surat.

4. In the above stated premise, following operative orders are passed :

(i) The respondent no.1 - original claimant no.1 is directed file an undertaking in personal capacity as well as an guardian of minor respondent nos. 2 and 3 within a period four weeks from the date of service of this order before the M.A.C.Tribunal (Main), Surat in the proceedings of M.A.C.Petition No. 653 of 1999 to the effect that claimant shall not abandoned the claim petition nor shall withdraw the same or permitted to be dismissed for default or for any other cause and that claimant shall obtain the decision on merits in the said claim petition being M.A.C.Petition No. 653 of 1999.

That on filing of such undertaking on behalf of claimant, the Tribunal is directed to disburse the amount deposited by present appellant in a usual course by appropriate security to the satisfaction of the Tribunal for the amount to be disbursed to the claimant only.

(ii) It has been stated on behalf of appellant that entire amount of impugned award has been deposited before the Tribunal and as such, there is no question of passing any order for transmitting the amount from this Court to the Tribunal.

5. Subject to aforesaid observation and direction as stated hereinabove, appeal stands disposed of as rejected with no order as to costs.

(A.K.Trivedi,J.)

(vipul)